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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| Proceeding | 92052140 |
| Party | Defendant Richard E. Swan |
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| Submission | Answer |
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| Attachments | USPTO Answer to Petition for Cancellation.pdf (5 pages)(223954 bytes) |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Austin Precision Products Inc.
d/b/a LaRue Tactical,

Petitioner,

v.

Richard E. Swan,

Registrant.

Cancellation No. 92052140
Registration No. 3466163

ANSWER TO PETITION FOR CANCELLATION

1. Registrant denies that it is the exclusive licensee of US Trademark Registration No. 3466163. Otherwise Registrant admits the allegations of Paragraph 1.
2. Registrant (including Registrant's licensee ARMS) admits that it is in the business of manufacturing and marketing gun accessories and gun accessory mounts. Registrant admits that gun accessory mounts allow gun accessories such as flashlights, scopes, lens sights, night vision devices and the like to be attached to a gun via a rail system. Otherwise, Registrant is without sufficient knowledge or information to form a belief as to the truth of the remainder of the allegations of paragraph 2, and of footnote 2 of paragraph 2, and therefore denies the same.
3. Registrant admits the allegations of paragraph 3.
4. Registrant admits that many gun accessory mounts are designed and implemented so that they will fit on rail interface systems. Registrant admits that MIL-STD-1913 defines the proper dimensions of a standardized dovetail rail. Otherwise Registrant is without sufficient knowledge or information to form a belief as to the truth of the remainder of the allegations of Paragraph 4 and of footnote 3 of paragraph 4, and therefore denies the same.
5. Registrant admits the allegations of paragraph 5.
6. Registrant denies the allegations of paragraph 6.
7. Registrant is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 7, and therefore denies the same.
8. Registrant admits that the '871 patent discloses and claims an Attachment Device. Otherwise, Registrant is without sufficient information or knowledge to form a belief as to the

truth of the remainder of the allegations of Paragraph 8, and therefore denies the same.

9. Registrant is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 9, and therefore denies the same.

10. Registrant admits the allegations of paragraph 10.

11. Registrant is without sufficient information or knowledge to form a belief as to the truth of the allegations of paragraph 11, and therefore denies the same.

12. Registrant admits that in Registrant's response to an office action for Reg. No. 3466163, Registrant states that a review of Registrant's patents, including the '871 patent: "will show the details of these patents are directed to the functional aspects of the overall design of the mounting system, i.e. the manner in which the base portion and the cam foot interact with the mounting rails. There is no discussion at all related to any specific function or advantage that is gained through the use of an actuator platform that has a particular shape. It is the Applicant's position that the shape of the actuator platform of the present application is simply one of many different feasible designs." Otherwise Registrant denies the allegations of paragraph 12.

13. Registrant admits that the '988 patent discloses and claims a Buffered Attachment Device. Otherwise, Registrant is without sufficient information or knowledge to form a belief as to the truth of the remainder of the allegations of Paragraph 13, and therefore denies the same.

14. Registrant is without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 14, and therefore denies the same.

15. Registrant admits the allegations of paragraph 15.

16. Registrant denies the allegations of paragraph 16.

17. Registrant denies the allegations of paragraph 17.

18. Registrant admits that in Registrant's Office Action response, Registrant represented that: "The proposed mark relates only to the unique shape of the platform that extends from the side of the accessory mount and receives the actuator." Otherwise Registrant denies the remainder of the allegations of paragraph 18.

19. Registrant denies the allegations of paragraph 19.

20. Registrant admits that in Registrant's Office Action response, Registrant's agent represented that: "Applicant's mount is the only mount that is marketed under the registered trademark THROW LEVER and is the only mount that includes the distinctively shaped actuator platform that is the subject of the present application." Registrant admits that it filed a reexamination request for US Patent No. 7,272,904 that included a reference to the M139/M140 Device. Otherwise, Registrant denies the remainder of the allegations of paragraph 20.

21. Registrant admits that in an Office Action response, Registrant represented that: "the attached Exhibit 4 depicts images of competing product that all include actuator levers that employ different interface means wherein some do not even include an actuator platform at all ... After reviewing Exhibit 4, it can clearly be seen that Applicant's proposed mark is just one of several feasible designs that have been implemented by a wide range of competitors on similar products." Otherwise, Registrant denies the remainder of the allegations of paragraph 21.

22. Registrant admits the Exhibit 4 of Registrant's Response in Reg. No. 3446163 depicts images of products are "competing products that all include actuator levers that employ different interface means wherein some do not even include an actuator platform at all." Otherwise, Registrant denies the remainder of the allegations of paragraph 22.

23. Registrant admits that in Registrant's response in Reg. No. 3446163, Registrant represented that: "These advantages would be the same regardless of the shape of the actuator platform. Accordingly, the utilitarian advantages claimed by the Applicant are advanced by the mounting system as a whole and are not the result of the shape of the actuator platform itself." Otherwise, Registrant denies the remainder of the allegations of paragraph 23.

24. Registrant admits that in Registrant's response in Reg. No. 3446163, Registrant stated that the designs of competitor's products: "are formed based on their desire to employ a simple and inexpensive method of manufacture. Thus can be seen, most of the alternative designs employ simple shapes and geometries that can be easily produced. The Applicant does not gain any distinct competitive advantage based on the use of the manufacturing technique." Otherwise, Registrant denies the remainder of the allegations of paragraph 24.

25. Registrant denies the allegations of paragraph 25.

26. Registrant admits that Registrant has sued Petitioner in United States District Court for the District of Massachusetts, C.A. No. 1:09-CV-10034, filed January 12, 2009, for infringement of Reg. No. 3466163. Otherwise, Registrant is without sufficient knowledge or information to form a belief as to the truth of the remainder of the allegations of paragraph 26.

27. Registrant reasserts the denials and admissions contained in the paragraphs referenced in paragraph 27.

28. Registrant denies the allegations of paragraph 28.

29. Registrant denies the allegations of paragraph 29.

30. Registrant reasserts the denials and admissions contained in the paragraphs referenced in paragraph 30.

31. Registrant denies the allegations of paragraph 31.

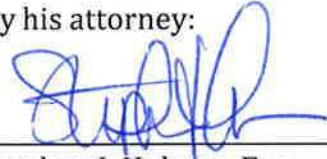
32. Registrant reasserts the denials and admissions contained in the paragraphs referenced in paragraph 32.

33. Registrant denies the allegations of paragraph 33.

Respectfully Submitted,

RICHARD E. SWAN

By his attorney:




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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **ANSWER TO PETITION FOR CANCELLATION** was served on counsel for Petitioner, this 8th day of April, 2010 by sending same via First-Class Mail, postage prepaid to:

Gail Taylor Russell
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Stephen J. Holmes